

REMARKS

Applicants have carefully reviewed the Application in light of the Office Action transmitted September 20, 2007 ("*Office Action*"). Claims 1-31 are pending in the Application, and the Examiner rejects all pending claims. Applicants amend the specification to correct a typographical error. Applicants respectfully request reconsideration of the pending claims and favorable action in this case.

I. Double Patenting Rejections

A. Application No. 10/804,550 and *Karbowiak*:

The Examiner provisionally rejects Claims 1, 8, 15, 22, 29, and 31 on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 3, 4, 14, 27, 40, 41, 42, 53, and 54 of co-pending Application No. 10/804,550 in view of U.S. Patent No. 4,663,748 issued to Karbowiak ("*Karbowiak*"). As this is a provisional double patenting rejection, Applicants defer the decision to file a terminal disclaimer or traverse the rejection until the Examiner has indicated that both the present Application and co-pending Patent Application No. 10/804,550 include allowable subject matter. See M.P.E.P. § 804 (subpart I.B.1).

B. Application No. 10/804,528 and *Karbowiak*:

The Examiner provisionally rejects Claims 1, 8, 15, 22, 29, and 31 on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 9, 17, 25, and 33 of co-pending Application No. 10/804,528 in view of *Karbowiak*. As this is a provisional double patenting rejection, Applicants defer the decision to file a terminal disclaimer or traverse the rejection until the Examiner has indicated that both the present Application and co-pending Patent Application No. 10/804,528 include allowable subject matter. See M.P.E.P. § 804 (subpart I.B.1).

II. Rejections under 35 U.S.C. § 102(b)

The Examiner rejects Claims 1-3, 6-10, 13-17, 20-24 and 27-30 under 35 U.S.C. § 102(b) as anticipated by U.S. Publication No. 2005/0058149 issued to Howe ("*Howe*"). Applicants respectfully traverse this rejection and submit that *Howe* does not describe, expressly or inherently, each and every limitation of the claims.

Consider Applicants' independent Claim 1, which recites:

An optical node comprising:
a data interface operable to receive data for transmission to a plurality of destinations;
a buffer operable to store the data;
a transmitting unit operable to couple to an optical transmission medium having a plurality of data channels and to selectively transmit optical signals on the data channels; and
a controller operable to receive a token authorizing transmission on one of the data channels, to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data, to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination, and to transmit the data on the authorized data channel in accordance with the transmission allocation and the destination allocation.

Applicants respectfully submit that *Howe* fails to describe every element of this claim.

Among other aspects, *Howe* fails to disclose (1) "to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data;" and (2) "to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination," as Claim 1 requires.

A. *Howe* fails to describe determining a transmission allocation.

Claim 1 also requires "to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data." *Howe* fails to teach these claimed aspects.

As describing these aspects, the *Office Action* relies on *Howe*, paragraph 893. *Office Action*, p. 7. In the cited portion, *Howe* states, "the controller 120 or InBuffer₁ 45 uses the priority level to determine which packets, cells, or frames should be moved out of the buffer first." Para. 893. Accordingly, Applicants assume that the Examiner points to *Howe*'s use of the priority level to determine "which packets, cells, or frames should be moved out of the buffer first" as describing "to determine . . . an amount of time that the authorized data channel may be utilized to transmit the data," as Claim 1 requires. *Howe* defines the priority level based on "standard packet, cell, or frame priority systems such as Quality of Service

(QOS), Class of Service (COS), Resource Reservation Protocol (RSVP) or other priority schemes.” Para. 893. However, *Howe*’s use of the priority level fails to teach, or even suggest, “determin[ing] . . . an amount of time that the authorized data channel may be utilized to transmit the data,” as Claim 1 requires. Thus, *Howe* does not describe, expressly or inherently, “to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data,” as Claim 1 requires.

Independent Claims 8, 15, 22, and 29 include limitations that, for substantially similar reasons, are not disclosed by *Howe*. Because *Howe* does not disclose, expressly or inherently, every element of independent Claims 1, 8, 15, 22, and 29, Applicants respectfully request reconsideration and allowance of Claims 1, 8, 15, 22, and 29 and their respective dependent claims.

B. *Howe* fails to describe determining a destination allocation.

Claim 1 requires “to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination.” *Howe* fails to teach these claimed aspects.

As described in Section A above, *Howe* fails to describe, expressly or inherently, determining a transmission allocation. Accordingly, *Howe* fails to describe determining a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination because this limitation incorporates the limitation of a transmission allocation.

Even if *Howe* did describe determining a transmission allocation, *Howe* fails to describe “to determine . . . a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires. As describing these aspects, the *Office Action* relies on *Howe*, paragraph 279. *Office Action*, p. 7. In the cited portion, *Howe* describes negotiation between a mid-destination router and a departure router as to when the departure router should send the data. The cited portion states, “Router 3 . . . looks at its own schedule, the transmission delay times, the calculated arrival times and duration time of the data that is to come from Departure Router 2.” Para. 279. *Howe* fails to teach, or even suggest, “determin[ing] . . . a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires. Thus,

Howe does not describe, expressly or inherently, “to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires.

Independent Claims 8, 15, 22, and 29 include limitations that, for substantially similar reasons, are not disclosed by *Howe*. Because *Howe* does not disclose, expressly or inherently, every element of independent Claims 1, 8, 15, 22, and 29, Applicants respectfully request reconsideration and allowance of Claims 1, 8, 15, 22, and 29 and their respective dependent claims. Accordingly, Applicants respectfully request the Examiner to withdraw the rejections of Claims 1-3, 6-10, 13-17, 20-24 and 27-30 under 35 U.S.C. § 102(b) and allow these claims.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of this Application.

If the Examiner feels prosecution of the present Application may be advanced by a telephone conference, Applicants invite the Examiner to contact the undersigned attorney at (214) 953-6584.

Although no fees are believed to be due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'K-P' followed by a horizontal line.

Kurt M. Pankratz
Reg. No. 46,977

Date: 12/19/2007

Customer No. **05073**